Judge Baker, cont.

In 2011 he joined the Board of Trustees of Garrett-Evangelical Theological Seminary in Evanston, IL, where he serves on the board's Academic Affairs committee.

Judge Baker was retained by election in 1992, 2002 and 2012. He and his wife have five children and – so far – nine grandchildren.

Glossary

Fifth Amendment - "No person shall . . . be compelled in any criminal case to be a witness against himself."

Miranda warning - Pre-interrogation warning required by *Miranda v. Arizona*, 384 U.S. 436 (1966). Under Miranda, people must be advised of their right to consult with an attorney before and during questioning, and their right against self-incrimination. Before police questioning begins, suspects must indicate they understands their rights and voluntarily waive them by submitting to questioning.

Fourteenth Amendment - No state shall "deprive any person of life, liberty, or property, without due process of law."

Indiana Evidence Rule 403 - "The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, or needlessly presenting cumulative evidence."

Indiana Evidence Rule 404(b) - "Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character."

Indiana Evidence Rule 701 - "If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is: (a) rationally based on the witness's perception; and (b) helpful to a clear understanding of the witness's testimony or to a determination of a fact in issue."

Attorneys for the Parties

For the Appellant

Noah Williams was born and raised in Arkansas. He earned his B.A. in Spanish from Lyon College in Batesville, Arkansas in 2004 and his J.D. from the Indiana University Maurer School of Law in Bloomington in 2011. He and his wife, Susan, along with their 15 month old son, Miles, live in Bloomington where Noah works as a Deputy Public Defender at the Monroe County Public Defender. Noah handles misdemeanor and felony cases both at trial and on appeal. He has previously argued before the Indiana Supreme Court.

For the Appellee

Chandra K. Hein has been employed with the Office of the Indiana Attorney General since 2011. She began as a Deputy Attorney General in the Criminal Appeals Section in 2012. Ms. Hein was raised in Spokane Valley, WA and graduated from Samford University in 2006, majoring in Music. She earned her law degree from Indiana University Robert H. McKinney School of Law in 2012, where she was a member of the Order of the Barristers, served on the moot court board, competed at the Mardi Gras Sports Law National Moot Court Competition, and was president of the Federalist Society. In a prior career, Ms. Hein worked for the Florida House of Representatives.

Notable Quotations About Law and Justice

***T**he complete independence of the courts of justice is peculiarly essential in a limited Constitution.*
- Alexander Hamilton, Federalist 78

***I**t is emphatically the province and duty of the Judicial Department to say what the law is. Those who apply the rule to particular cases must, of necessity, expound and interpret that rule. If two laws conflict with each other, the Courts must decide on the operation of each.*
- Chief Justice John Marshall

***W**hatever disagreement there may be as to the scope of the phrase "due process of law" there can be no doubt that it embraces the fundamental conception of a fair trial, with opportunity to be heard.*
- Justice Oliver Wendell Holmes, Jr.

***T**he ultimate touchstone of constitutionality is the Constitution itself and not what we have said about it.*
- Justice Felix Frankfurter

***L**aw matters, because it keeps us safe, because it protects our most fundamental rights and freedoms, and because it is the foundation of our democracy.*
- Justice Elena Kagan

***M**ost high courts in other nations do not have discretion, such as we enjoy, in selecting the cases that the high court reviews. Our court is virtually alone in the amount of discretion it has.*
- Justice Sandra Day O'Connor

***R**estriction on free thought and free speech is the most dangerous of all subversions. It is the one un-American act that could most easily defeat us.*
- Justice Thurgood Marshall

***T**he day you see a camera come into our courtroom, it's going to roll over my dead body.*
- Justice David Souter

SYNOPSIS

On Oct. 23, 2010, Robin Sowders and his wife, Melissa, argued at her place of employment. Melissa's son, Andre Wells, took Robin home. Robin then threatened to kill Melissa's son, A.P. Melissa returned home, picked up A.P., and left to stay the night at another location.

The next morning, a friend found Robin on the floor of his and Melissa's bedroom. Robin had been severely beaten and he later died from trauma to the head. Wells told his friend, Brian Thompson, that he had killed Robin. Wells considered moving to Florida, but Melissa told him it would make him look guilty.

After examining cell phone records and viewing a Facebook post from Wells that stated, "I'm still free," the police focused on Wells as a suspect. Thompson agreed to "wear a wire" to record Wells' confession. He recorded three conversations during which Wells confessed to killing Robin. Later, another person reported Wells confessed and the State charged Wells with murder.

In the fall of 2012, Wells told a fellow inmate, Jamal Jefferson, that he had killed Robin. He asked Jefferson to help him kill Thompson, who Wells discovered had recorded his confessions. After Wells left jail, Jefferson told police of Wells' plot.

Wells moved to suppress Thompson's recordings, evidence of his conversations with Jefferson, and evidence of cell phone activity the night of the crime. The trial court denied the motions and admitted the evidence at trial. A jury found Wells guilty of murder.

On appeal, Wells challenges the admission of the challenged evidence.

Wiretap Recordings

Wells argues that the admission of Thompson's recordings violated his Fifth Amendment right to not incriminate himself, and he should have been read his Miranda rights before he talked to Thompson.

Wells also argues that the admission of the wiretap recordings violates his due process rights because Thompson coerced Wells into confessing by relay-

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Court of Appeals of Indiana

Hearing oral argument at
University of Southern Indiana
Wednesday, April 1, 2015 @ 1 p.m.

Wells v. State
53A04-1402-CR-61

On Appeal from Monroe Circuit Court
The Honorable Teresa D. Harper, Judge

Synopsis, cont.

ing threats from Robin's family. Wells asserts the recordings were more prejudicial than probative under Indiana Evidence Rule 403. Finally, Wells argues the tapes were inadmissible because they were unintelligible.

The State argues that Thompson was not required to read Wells his Miranda rights because Thompson was not a police officer and Wells was not coerced into confessing.

The State asserts only parts of the recordings were unintelligible, and the parties agreed how to deal with the unintelligible parts.

Finally, the State argues that any error was harmless because Wells told two other people he killed Robin; Wells' description of the crime matched the evidence; and Wells had a motive to kill Robin.

Evidence of a Plot to Kill

Wells argues evidence of a plot to kill Thompson should have been prohibited by Indiana Evidence Rule 404 (b) because it could lead the jury to convict him of murdering Robin based on his bad character or propensity to commit other crimes. He also argues the evidence was more prejudicial than probative.

The State argues that that evidence did not violate Rules 404(b) or 403 because Jefferson's testimony was corroborated by other evidence and any prejudice to Wells did not outweigh the probative value of the evidence.

The State also asserts any error was harmless because substantial other evidence supported Wells' conviction.

Cell Phone Activity Evidence

Wells argues that the testimony of David Salyers, a cell phone network engineer, about cell phone locations should not have been admitted. He argues the evidence is more prejudicial than probative, and Salyers did not qualify as an expert lay witness under Indiana Evidence Rule 701.

The State again asserts that any error is harmless because substantial independent evidence supported Wells' conviction.

Court of Appeals Mission Statement:
"To serve all people by providing equal justice under law"

Scientific evidence and expert testimony

In the very first Sherlock Holmes story, "A Study in Scarlet," Holmes claims to have discovered a unique reagent for identifying hemoglobin. "Why, man, it is the most practical medico-legal discovery for years," he exclaims to Dr. Watson. "Don't you see that it gives us an infallible test for blood stains?"

To which a modern judge might ask, "Says who?"

It's a natural question. Most science advances only after replication and review by the broader scientific community. Courts are properly cautious, then, about the use of novel scientific methods in both criminal and civil cases.

Judge Cale J. Bradford of the Court of Appeals of Indiana, who teaches Forensic Science and the Law at IUPUI, said courts must consider two threshold issues about scientific evidence. First, is the evidence relevant enough to help prove or disprove an issue in the case? Second, is it sufficiently reliable under Indiana Rule of Evidence 702?

Rule 702 reads in part: "(b) Expert scientific testimony is admissible only if the court is satisfied that the ... testimony rests upon reliable scientific principles."

The first impactful analysis of whether and when to accept scientific evidence in federal courts came in *Frye v. United States*, a 1923 case decided by the District of Columbia Circuit. *Frye* essentially said that scientific evidence should only be admitted if it's generally accepted by the relevant scientific community (e.g., physics by physicists, chemistry by chemists, etc.).

But just as science isn't static, neither are courts. *Frye* was succeeded in 1975 by Federal Evidence Rule 702, which has in turn been interpreted by two U.S. Supreme Court cases known as *Daubert* and *Kumho Tire*.

In short, *Daubert* outlined four criteria for determining the reliability of a given scientific method (including testing, peer review, and error rates), while *Kumho* extended the standards for expert opinion testimony to nonscientific expert testimony as well.

But those cases don't automatically apply to state courts. As the Indiana Supreme Court held in *Turner v. State*, a 2011 case, *Daubert* is "instructive" but not binding on Indiana courts.

Not that Indiana ignores federal guidance. Judge Bradford said Indiana evidence rules closely model federal rules, including the trial judge's role as gatekeeper for the admission of expert testimony.

Judges aren't the only ones who grapple with scientific complexities. Trial attorneys have to coax understandable testimony from expert witnesses, and lay juries have to weigh that evidence – perhaps influenced by media depictions of scientific certainty.

"There are varied opinions on whether the 'CSI' factor is real or perceived," said Judge Bradford, who presided at more than 250 jury trials as judge of Marion Superior Court.

As a practical solution, he said, lawyers and judges in "expert" cases should exercise special care during jury selection, direct and cross-examination, and jury instructions to properly educate and inform jurors about expert testimony.

What happens after oral argument?

After oral argument, a designated "writing judge" drafts an opinion for the others to consider. Final language may involve several drafts and significant collaboration among the judges.

Generally, opinions affirm or reverse lower court rulings in whole. But some affirm in part, reverse in part, or both. Not infrequently, the opinion instructs the trial court about next appropriate steps.

Many opinions are unanimous, although non-unanimous opinions (2-1) are not uncommon. Judges sometimes write separate concurring or dissenting opinions that emphasize different points of law or facts than the main opinion. (Historically, the ideas contained in dissents have sometimes been adopted as the law of the land – over time – on a particular issue.)

Once issued, all opinions are published on ***www.courts.in.gov*** and are permanently maintained by the Clerk of Appellate Courts.

Parties can appeal Court of Appeals decisions to the Indiana Supreme Court by filing a petition to transfer. But transfer is not automatic; the Supreme Court can grant or deny transfer with or without giving a reason.

If the petition is denied, the Appeals Court decision stands.

Today's Panel of Judges

The Honorable Melissa S. May

Vanderburgh County

Born in Elkhart, **Melissa S. May** studied criminal justice at Indiana University-South Bend before earning her law degree from Indiana University School of Law-Indianapolis in 1984. She then launched a 14-year career in private legal practice in Evansville that focused on insurance defense and personal injury litigation.

Judge May moved directly from private practice to the Court of Appeals in 1998 and was retained by election in 2000 and 2010. She later served as Presiding Judge of the Fourth District, which covers all of Indiana.

Judge May has long been active in local, state and national bar associations and foundations, with a particular focus on continuing legal education and appellate practice. At various times, Judge May has chaired the Indiana State Bar Association's Litigation and Appellate Practice sections and was secretary to the Board of Governors.

As chair of the Indiana Pro Bono Commission, Judge May worked with 14 pro bono districts to train lawyers and mediators on how to assist homeowners facing foreclosure. She also serves on an Indiana Judicial Conference Committee that translated all civil jury instructions into "plain English."

Judge May teaches trial advocacy at Indiana University McKinney School of Law and frequently speaks on legal topics to attorneys, other Judges, schools, and other professional and community organizations. She is special counsel to the American Bar Association's Standing Committee on Attorney Specialization, on which she's served since 2003.

In October 2011, Judge May received the Women in the Law Recognition Award from the Indiana State Bar Association for her dedication to helping women advance in the legal community.

She and her husband live in Morgan County.

The Honorable John G. Baker

Monroe County

John G. Baker was named to the Court of Appeals in 1989, which makes him the longest-serving member on the current Court. He has served as Presiding Judge of the Court's First District, which covers all of southern Indiana, and as Chief Judge of the Court from 2007-2010.

Judge Baker grew up along the Ohio River in Aurora, IN, but attended high school at Culver Military Academy in northern Indiana. He studied history at Indiana University-Bloomington, and later received his law degree from Indiana University School of Law-Bloomington.

He practiced law in Monroe County for many years before joining the Monroe County bench as first a county and later a Superior Court Judge. Diligently, he handled more than 15,000 cases in 13 ½ years on Monroe County benches, and has written more than 4,000 majority opinions for the Court of Appeals.

Judge Baker is greatly interested in the history, structure and organization of Indiana's judicial branch of government. He regards Indiana judges not as remote figures who conduct abstract arguments, but as people fully engaged in the life of the law and their communities.

He has taught in college and law school and is active in local, state and national bar associations. In 2013, Judge Baker retired after 33 years of teaching at the School of Public and Environmental Affairs, Indiana University-Bloomington. He continues to teach during the Spring semester at the McKinney School of Law.

Judge Baker's many community activities include his church, the YMCA and the Boy Scouts (where he attained Eagle Scout status as a youth).

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The Honorable Betty Barteau

Marion County

Betty Barteau was born in Boonville, Warrick County, IN. She attended Indiana University Law School at Indianapolis, graduating with an L.L.B. in 1965. She was admitted to the Indiana Bar that same year. She served as Boonville City Judge, Deputy Prosecutor in Spencer and Warrick Counties, and Warrick County Attorney. She had a general law practice in Marion County from 1969 to 1974, before becoming a Marion County Superior Court Judge in 1975.

Judge Barteau served as a judge on the Court of Appeals of Indiana from January 1991 to April 1998. She left the court to assume the director position for the Russian American Judicial Partnership, a USAID program based in Moscow. She served in that position until 2003.

Judge Barteau has held memberships in various professional and community organizations and has received numerous awards and recognitions for her work in both areas:

Journal, Order of Coif, 1965. Indianapolis, Indiana State and American Bar Associations. National Association of Women Judges, Director 1979-81, 1989 -91, University of Virginia, LL.M., 1995. Indiana University - Indianapolis, LL.B., Law Association of Family and Conciliation Courts, President 1980. National Judicial College Faculty, since 1978, Griswold Award for Teaching Excellence, 1993. Marion Superior Court Judge 1975-90; Indiana Employment Security Review Board 1970-72; private practice Warrick County 1965-69, Marion County 1969-74. Director of the Russian American Judicial Partnership, a USAID program based in Moscow, 1998-2003.

At the request of the Chief Judge of the Court of Appeals, she serves as a Senior Judge.